UNITED STATES DIST		
BRANDON MCFADDE	N,	
	Plaintiff,	
vs.		9:09-CV-1415
SCOTT HERMAN, et a	l.,	
	Defendants.	

THOMAS J. McAVOY, Senior United States District Judge

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon.

Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Baxter's Report-Recommendation [dkt. # 54] have been filed, and the time to do so has expired. Furthermore, after examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

II. CONCLUSION

Accordingly, the Court **ADOPTS** the Report-Recommendation [dkt. # 54] for the reasons stated therein. Therefore, Defendants' motion to dismiss [Dkt. # 53] is **GRANTED**IN PART and **DENIED IN PART**. All claims brought against Defendants Herman and

Finton in their official capacities are DISMISSED. Any claim alleging the failure to intervene brought against Defendant Herman in his personal capacity is DISMISSED WITHOUT PREJUDICE. The motion is **DENIED** as to Plaintiff's claim of excessive force brought against Defendant Finton in his personal capacity.

IT IS SO ORDERED.

Dated: February 15, 2013

Thomas J. McKvoy Senior, U.S. District Judge